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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

UNITED STATES OF AMERICA	)	Criminal No. 7:05CR00040-1
	)	
v.	)	<u>2255 FINAL ORDER</u>
	)	
ERNEST FREDERICK HODGES	)	By: Samuel G. Wilson
	)	United States District Judge

In accordance with the accompanying Memorandum Opinion, it is hereby


**ADJUDGED AND ORDERED**

that Hodges' motion (Docket No. 128) is construed as a motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255, and the Clerk is **DIRECTED** to docket it as such; this § 2255 action shall be and hereby is **DISMISSED without prejudice** and this case is **STRICKEN** from the active docket of the court.

Further, finding that Hodges has failed to make the requisite substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c)(1), a certificate of appealability is **DENIED**.

The Clerk is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to petitioner.

ENTER: This 22<sup>nd</sup> day of November, 2010.

  
\_\_\_\_\_  
United States District Judge